IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

COCP No.1000 of 2005
Date of decision: November 6, 2006.

Om Parkash & Ors.

...**Petitioner(s)**

v.

Shri Kanwar Daman Singh & Ors.

...**Respondent(s)**

Present: Shri Mahavir Sandhu, Advocate for the petitioner.

Shri Vipul Bishnoi, Advocate for respondent No.1.

Shri Balwinder Singh, Advocate for respondents No.2 and 3.

Shri R.N. Lohan, Advocate for respondents No.4 and 5.

Surya Kant, J. (Oral)

This contempt petition has been filed alleging, *inter-alia*, that despite the petitioners' dispossession having been stayed by this Court vide order dated September 29, 1999 passed in CWP No.18744 of 1998 (Annexure P-2), the respondents, who are Block Development & Panchayat Officer and Sarpanch/former Sarpanch of the Gram Panchayat, as well as Office Bearers of some organization, have dispossessed the petitioners from the subject property where construction of a temple, as reflected in the photographs, Annexure P-6, has been started.

It may be mentioned that the order dated 29.9.1999 (Annexure P-2), whereby it was directed that the petitioners will not be dispossessed from the land in dispute, was passed as an interim measure till the

petitioners were permitted to approach the Collector and the mater was decided by the said authority.

There is no denial to the fact that pursuant to the above stated order, the petitioners filed a suit under section 13-A of the Punjab Village Common Lands (Regulation) Act, 1961, however, their prayer for ad-interim injunction to restrain the respondents from dispossessing them and/or raising construction over the subject property, was declined by the court of Collector. The non-grant of injunction prompted the petitioners to approach this Court again by way of CWP No.1918 of 2005, which was disposed of after hearing Learned Counsel for the parties on 30.8.2005, in the following terms:-

> "Learned Counsel for the parties are ad idem that the petition be disposed of without disturbing the status as on date for deciding the petition under Section 13-A of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the Act) as applicable to the State of Haryana.
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> In view of the above, the petition is disposed of with a direction to the learned Collector to dispose of the petition under section 13-A of the Act within a period of three months from the date of receipt of certified copy of this order. He had been authorized so far as continuation of proceedings pursuant to Section 13-A are concerned. The parties have led their evidence and the case is ready for arguments. We are sure that the Collector shall grant appropriate opportunity of being heard to the parties accordingly.
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> It is further conceded by Learned Counsel for the parties

that any construction which has been made upon the land, which is subject matter before the learned Collector, the same shall be subject to the decision of the Collector to be rendered in the afore stated petition." (emphasis applied)

Admittedly, the Collector has since decided the suit and has dismissed the same vide judgment and decree dated 30.6.2006, which is stated to be further subject matter of an appeal filed by the petitioners.

Learned Counsel for the petitioner vehemently contends that on 10.10.2004 when the petitioners were forcibly dispossessed from the subject property, the order dated 29.9.1999 staying their dispossession was very much operative and, thus, the respondents are guilty of willful and deliberate violation thereof.

On the other hand, learned counsel representing the respondents contend that in view of the subsequent order dated 30.8.2005 passed by a division Bench of this Court, the construction, if any, raised at the spot stood regularized and it was with the consent of the petitioners that the validity or continuation of the said construction was made "subject to the decision of the Collector". It is, thus, argued that since the Collector has dismissed the suit, the construction of the temple further stands validated in favour of the respondents.

After hearing Learned Counsel for the parties, I am of the view that undoubtedly the petitioners could not have been dispossessed even from a part of the subject land so long as the order dated 29.9.1999 was operative. The said order remained operative till the suit has been dismissed by the learned Collector vide judgment and decree dated 30.6.2006. In this view of the matter, it could possibly be said that

construction of the temple, may be on a part of the subject land, amounted to tinker with the order dated 29.9.1999 passed by this court. However, in their subsequent writ petition, the petitioners themselves consented to the passing of the order dated 30.8.2005 by this Court in terms whereof "any construction which has been made upon the land, which is subject matter before the learned Collector" was made "subject to the decision of the Collector....". Having given this consent and after suffering an adverse decision from the Collector vide which their suit has been dismissed, the petitioners cannot now be permitted to complain of violation of order dated 29.9.1999, noticed above.

Consequently, I do not find any merit in this petition, which is accordingly dismissed.

It will, however, be open for the petitioners to pursue their remedy in the appeal stated to be pending before the appellate authority.

Rule discharged.

November 06, 2006. [**Surya Kant**]
kadyan **Judge**